

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36340

STATE OF IDAHO,)	2010 Unpublished Opinion No. 338
)	
Plaintiff-Respondent,)	Filed: February 2, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
DONALD LEROY SMITH,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Adams County. Hon. Stephen W. Drescher, District Judge.

Order denying motion for credit for time served, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Donald Leroy Smith pled guilty to possession of methamphetamine. Idaho Code § 37-2732(c)(1). The district court imposed a unified four-year sentence with an eighteen-month determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Smith on probation. Smith admitted to violating the terms of his probation and the district court revoked his probation, reinstated it, and then continued the probation period for another year. Subsequently, Smith admitted to violating his probation a second time and the district court again revoked his probation, reinstated it, and extended Smith's probation for another year. Within a few months Smith admitted to violating his probation a third time and the district court revoked Smith's probation and executed the underlying sentence, awarding Smith credit for time

served in jail. Smith filed a motion for credit for time served requesting that he be granted credit for all of the time he served on probation. The district court denied the motion. Smith appeals.

A defendant is not entitled to credit for time served while on probation and not incarcerated. *State v. Banks*, 121 Idaho 608, 609, 826 P.2d 1320, 1321 (1992); *State v. Climer*, 127 Idaho 20, 23, 896 P.2d 346, 349 (Ct. App. 1995); *State v. Sutton*, 113 Idaho 832, 834, 748 P.2d 416, 418 (Ct. App. 1987); I.C. § 19-2603. Therefore, the district court's order denying Smith's motion for credit for time served while on probation and not incarcerated is affirmed.